Filed 2/11/09 Comerchero v. International Med. Research CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

VICTOR COMERCHERO et al.,

Plaintiffs and Respondents,

v.

INTERNATIONAL MEDICAL RESEARCH, INC. et al.,

Defendants;

RONALD N. GOTTSCHALK,

Objector and Appellant.

[And seven other cases.[*]]

B206291
(San Diego County
Super. Ct. No. GIC846201;
Los Angeles County
Super. Ct. No. BC277067)

---

[*] *Meco v. International Medical Research, Inc.* (IMR) *et al*. (Los Angeles County Super. Ct. No. BC277068, San Diego Super. Ct. No. GIC846202); *Comerchero v. IMR et al*. (Los Angeles County Super. Ct. No. BC277272, San Diego Super. Ct. No. GIC846203); *Wybaczynsky v. IMR et al*. (Los Angeles County Super. Ct. No. BC290048, San Diego Super. Ct. No. GIC846204); *Campbell v. IMR et al*. (Los Angeles County Super. Ct. No. BC295314, San Diego Super. Ct. No. GIC846207); *Schoonmaker v. IMR et al*. (Los Angeles County Super. Ct. No. BC310250, San Diego Super. Ct. No. GIC846209); *Corsetti v. IMR et al*. (Los Angeles County Super. Ct. No. BC310301, San Diego Super. Ct. No. GIC846214); *Filowitz v. IMR et al*. (Los Angeles County Super. Ct. No. BC310321, San Diego Super. Ct. No. GIC846221).

APPEAL from a judgment of the Superior Court of Los Angeles County. Luis R. Vargas, Judge. (Judge of the San Diego Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Law Offices of Philip A. Putman, Philip A. Putman; and Ronald N. Gottschalk for Appellant.

No appearance for Respondents.

Ronald Gottschalk appeals the trial court's order disqualifying him from a group of related actions in which he represented what appear to be a number of plaintiffs and one plaintiff and cross-defendant. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The limited record submitted on appeal makes a full factual recitation impossible. From the record before this court, it appears that Gottschalk represented plaintiffs in eight lawsuits against International Medical Research, Inc., and other defendants. In 2007, defendant Us Too International, Inc. filed a motion to disqualify Gottschalk. That motion is not in the record on appeal, but the August 20, 2007 order denying the motion is included. Some time thereafter, Us Too filed a motion for reconsideration, also not included in the record on appeal; some of the documents that may have been submitted in opposition to that motion were provided to this court.

Exactly whom Gottschalk represented by the time of the disqualification is not clear from the record. A minute order from November 2007 makes reference to "attorney Gottschalk's withdrawal from the case," although it is not clear from that order whether that withdrawal was actual or potential. Gottschalk, too, made reference to his "withdrawal from these cases" in a declaration he filed with the court: "Ronald Gottschalk's withdrawal from these cases was not a disqualification. The Court on five separate occasions from October 17, 2007, Judge Vargas stated he was 'granting

Mr. Gottschalk's unopposed Motion' because he needed surgery." The record does not clearly show whether Gottschalk represented any clients in the matter after that time. The declaration he submitted in opposition to the motion to reconsider was not submitted on behalf of any of the plaintiffs, but by Gottschalk as counsel for himself. When the motion for reconsideration was argued on January 25, 2008, other attorneys seem to have appeared for many, if not all, of the plaintiffs in these consolidated cases. At that hearing, Gottschalk stated that he represented "the Chapter VII trustee in the Federal Court," but did not purport to represent any parties in this litigation any longer. Gottschalk argued instead that if he was disqualified that the two attorneys now representing the plaintiffs should be disqualified as well: "Mr. Donovan has the same alleged disqualification as I. He represents Taras Wybaczynsky and represents every one of the other plaintiffs. If I'm disqualified, he would be disqualified, Mr. Lusby would be disqualified, because they represented the same parties as well."

The court took the matter under submission, and on January 31, 2008, issued a sua sponte order disqualifying Gottschalk from the coordinated cases. The court wrote, "The Court, having taken its own Motion for Reconsideration re: Disqualification under submission on 1/25/08 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows: [¶] On its own motion, this Court orders Ronald Gottschalk disqualified from these Coordinated Cases." The court based its ruling on a conflict of interest: "The Court may disqualify an attorney *sua sponte* based upon a conflict of interest. [Citation.] [¶] 'Disqualification is automatic where an attorney, while still representing a client, undertakes to simultaneously represent a new client in an action against the first client.' [Citation.] In the instant matter, Mr. Gottschalk's concurrent representation of Mr. Wybaczynsky, along with the other plaintiffs who admittedly bought PC-Spes from Mr. Wybaczynsky, created a conflict of interest that requires automatic disqualification in that Mr. Gottschalk represented clients whose interests were directly adverse in the same litigation." Gottschalk appeals.

DISCUSSION

I. Claim that Order's Lack of Detail Violates Public Policy, Due Process, Rules of Professional Conduct

Gottschalk contends that the disqualification order is void because it failed to set forth what Gottschalk could or could not do, and that it therefore violated public policy, the due process rights of the Filowitz plaintiffs, and rule 3-700(D) of the State Bar Rules of Professional Conduct. Gottschalk provides no legal authority to support his contentions concerning the level of description of acceptable conduct that supposedly must be included in a disqualification order.

Gottschalk argues that a disqualification order has to be understood in light of an attorney's ethical obligation under the Rules of Professional Conduct to release to the client his or her papers and property. He argues that if an attorney were ordered not to communicate in any manner with his former clients and their new attorneys, the client's interests would be jeopardized; he then contends that this is what the defendants were aiming at when they moved to disqualify him. He also contends that this is what happened in the present case "when defense counsel and Judge Vargas improperly threatened the undersigned with criminal contempt if he utilized any of the work product of Appellant which had been made over 4-1/2 years of extensive litigation and upon which the plaintiffs prevailed in connection with hearings in this case." The brief continues, "It would further constitute a void order as Judge Vargas had no jurisdiction or power to order Appellant not [to] communicate with Mr. Filowitz or Mr. Putman as his new counsel with regard to representing Mr. and Mr. Filowitz in the Federal Court litigation or the State Court litigation as a plaintiffs [*sic*]."

Here, Gottschalk is clearly complaining not about the disqualification order, but about the trial court's later alleged attempts to curtail communication and its alleged threats of a contempt proceeding. The disqualification order did not bar any communication, nor did it preclude the use of Gottschalk's work product by a successor

attorney. This argument does not demonstrate any basis for vacating the disqualification order or for finding it to violate public policy, due process, or the Rules of Professional Conduct.

The remainder of this argument includes an attack on the trial court judge who granted the disqualification order, including allegations of conspiracy and violations of constitutional rights that are not supported by any citations to admissible evidence. We may not consider alleged facts that are outside the record on appeal. (*CIT Group/Equipment Financing, Inc. v. Super DVD, Inc.* (2004) 115 Cal.App.4th 537, 539, fn. 1 (*CIT Group*).) Gottschalk also discusses a later contempt proceeding against Gottschalk and complains that the disqualification order cannot be interpreted as urged in the contempt proceedings. These later proceedings and issues concerning what Gottschalk could do in light of the disqualification order have no bearing on the validity of the order when issued, and Gottschalk has not offered cogent legal argument or authority to the contrary. He has not shown that the disqualification order should be vacated.

II. Infringement on Duties Mandated by the State Bar

Gottschalk argues that to the extent the disqualification order interferes with State Bar rules concerning an attorney's obligation to assist a former client, the order is "void for lack of jurisdiction and abridges the First, Fifth, and Fourteenth Amendments." Gottschalk, however, has not demonstrated that the disqualification order interfered in any way with the Rules of Professional Conduct or with his obligations to his former counsel upon the termination of employment.

Gottschalk again quotes rule 3-700(D) of the Rules of Professional Conduct, which requires that counsel whose employment has been terminated must "promptly release to the client, at the request of the client, all the client papers and property." (Rules Prof. Conduct, rule 3-700(D)(1).) Gottschalk's entire argument is as follows: "Judge Vargas' all or nothing interpretation of the sua sponte disqualification order

interferes with the State Bar Rules of Professional Conduct and the Supremacy Clause of the Constitution with regard to federal court litigation, for which Judge Vargas had no jurisdiction whatsoever thereby rendering the order appealed from void ab initio and unenforceable."

This argument is defective and unpersuasive. Gottschalk has provided no citations to the record or to any legal authority supporting his position that the order violated State Bar rules. His argument is purely conclusory and lacks legal reasoning and analysis. For both these reasons, this argument is forfeited on appeal. (*Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 699-700 ["When an issue is unsupported by pertinent or cognizable legal argument it may be deemed abandoned and discussion by the reviewing court is unnecessary"]; *In re S.C.* (2006) 138 Cal.App.4th 396, 410 ["This is no legal analysis at all. It is simply a conclusion" and the issue is therefore forfeited]; *Boyle v. CertainTeed Corp*. (2006) 137 Cal.App.4th 645, 649-650 [appellant "must present argument and legal authority on each point raised"] (*Boyle*).) Moreover, the argument is not directed at the disqualification order itself, which does not prohibit the return of client property, but is directed at unidentified subsequent supposed statements of the court, none of which appear in the record on appeal, concerning what Gottschalk was permitted to do in light of the disqualification order and his continued involvement in the case. Gottschalk has not demonstrated here that the order should be vacated.

III. Attack on the Interpretation of the Disqualification Order

Gottschalk next complains that the First Amendment and Fourteenth Amendments are violated by "an order of absolute prevention of a former attorney from contact with his client." He argues, "Even if sua sponte disqualification was valid (for purpose of argument only) ordering a complete non-contact with a former client, who is a current client in the federal court cases violates the most fundamental of all constitutional rights." This language makes clear that Gottschalk is not complaining about the disqualification order itself—he even makes his argument presuming its validity. Indeed, Gottschalk's

argument is entirely directed at attacking the interpretation of the disqualification order that was allegedly argued in later unsuccessful contempt proceedings. It therefore furnishes no ground for overturning the disqualification order.

Gottschalk's entire argument, moreover, is made without a single citation to facts in the record on appeal; is based on facts outside the record; concerns events after the issuance of the disqualification order; bears no connection to the propriety of the disqualification order; includes no citations to pertinent legal authority (all the authorities cited concern contempt proceedings); misrepresents the record on appeal;[1] and does not demonstrate any invalidity in the order presently on appeal. (*Boyle, supra,* 137 Cal.App.4th at pp. 649-650 [party asserting error must present argument and legal authority on each point raised; appellant bears the burden of overcoming the presumption of correctness]; *In re S.C., supra,* 138 Cal.App.4th at p. 408 ["To demonstrate error, appellant must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error"].)

IV. Legal Standard and Analysis of Disqualification Ruling

Gottschalk argues that the trial court did not consider the effect of his disqualification on his clients or the consents and waivers they had signed, and therefore abused its discretion when it disqualified Gottschalk. Gottschalk asserts that the trial

---

[1] For instance, Gottschalk asserts, without citation to the record on appeal, that "Judge [L]ink deemed the enforcement of the disqualification order void ab initio." The ruling from Judge Link in the record includes no such ruling; Judge Link dismissed the contempt proceedings against Gottschalk "because the charging documents failed to establish a prima facie case" against him. The court expressly declined to take any "action as to the validity of the underlying disqualification order" because the issue was not before the court; reminded Gottschalk "that he is disqualified from this case as far as representing anybody;" and "caution[ed] Mr. Gottschalk in his future activity in the case."

court considered those items "only in connection with the original motion to disqualify" him.

Gottschalk relies on a declaration by William Filowitz as an indication that Filowitz waived any conflict of interest and on two declarations by Taras Wybaczynsky as evidence that there was no need to disqualify him; however, all three declarations are unsigned. Gottschalk then asserts that "All plaintiffs submitted declarations that they wanted Appellant to represent them and each had signed written waivers and consents in proper form that are identical to those that are set forth in the excerpt from the record." The only waivers and consents in the record, however, are those of William and Donna Filowitz and Taras Wybaczynsky; there is no evidence in the record before this court to support Gottschalk's assertion that all the plaintiffs had executed waivers of any conflict of interest. A reviewing court may not give any consideration to alleged facts that are outside the record on appeal. (*CIT Group*, *supra*, 115 Cal.App.4th at p. 539, fn 1.)

With respect to the argument that the trial court improperly failed to consider the written consents and waivers, Gottschalk offers no citation to the record to support these allegations, and in our review of the record we have not identified any indication that the court believed it could not consider pertinent evidence and argument. To the contrary, the trial court's ruling indicates that the court indicated that it based its ruling on the evidence presented and the arguments of counsel.

While it is not at all clear from the arguments presented, it appears that what Gottschalk intends to do in this passage is to make the substantive argument that any conflict of interest presented here was in fact waivable; that any conflict was waived by the plaintiffs; that disqualification was therefore unwarranted; and that the trial court failed to perceive this fact. Evaluation of this argument would require us to analyze the conflict of interest at issue in light of existing law, but we are unable to do so because of the inadequate record on appeal. Gottschalk neglected to provide this court with many documents relevant to the issues on appeal, including the underlying complaint; the cross-complaint or cross-complaints against Wybaczynsky that may have given rise to the conflict of interest; the original motion to disqualify and the supporting papers and

evidence; a full set of documents and evidence submitted to the trial court to oppose the motion to disqualify; the reply papers in support of the motion to disqualify; the motion to reconsider the ruling on the disqualification motion and supporting evidence; a memorandum of points and authorities opposing the motion for reconsideration; the exhibits to Gottschalk's declaration supporting the opposition to the motion for reconsideration; and the reply brief supporting the motion for reconsideration. Without the moving papers and the evidence that was presented to the trial court, we cannot review the basis of the court's decision. Gottschalk has failed to satisfy his burden of providing an adequate record on this issue, requiring that the issue be resolved against him. (*Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502; *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296; see also *Uniroyal Chemical Co. v. American Vanguard Corp*. (1988) 203 Cal.App.3d 285, 302 [a "record is inadequate, and appellant defaults, if the appellant predicates error only on the part of the record he provides the trial court, but ignores or does not present to the appellate court portions of the proceedings below which may provide grounds upon which the decision of the trial court could be affirmed"].)

V. Impact of Subsequent Change in Trial Judge

Gottschalk next contends that Judge Vargas was disqualified as of January 25, 2008, and that he should further be deemed to have been disqualified as of June 2007. This argument, however, lacks both legal reasoning and citations to relevant authority and admissible evidence. "'[E]very brief should contain a legal argument with citation of authorities on the points made. If none is furnished on a particular point, the court may treat it as waived, and pass it without consideration. [Citations.]' [Citation.]" (*Mission Shores Assn. v. Pheil* (2008) 166 Cal.App.4th 789, 796.)

Gottschalk asserts as follows: On August 22, 2008, Judge Link dismissed the contempt charge against Gottschalk. The orders of Judge Vargas from June 2007 onward should be deemed void. "Judge Vargas intentionally delayed the disqualification against

Appellant which was required to be given until after the disqualification order of January 31, 2008. Thereafter Judge Vargas was disqualified as the Presiding Judge twice for, inter alia, violating the constitutional rights of Appellant, Filowitz Plaintiffs, and Mr. Putman." The disqualification order should be deemed void "based on the subsequent disqualification of Judge Vargas by the Presiding Judge which was confirmed by the Chief Justice of the California Supreme Court." We must accept the allegations in the verified challenge for cause as true and they mandated Judge Vargas's disqualification in this case. Because disqualification occurs when the facts creating disqualification arise, not when the order is made, the order disqualifying Gottschalk is void and should be vacated.

This vague and conclusory argument is not supported by a single citation to the record. Gottschalk has not demonstrated that Judge Vargas was disqualified as of January 25, 2008. The orders in the record that pertain to a change of judge date from July and September 2008. The July order is an order assigning a hearing on an order to show cause re contempt concerning Gottschalk to Judge Frederic Link based on Gottschalk's July 14, 2008, peremptory challenge under Code of Civil Procedure[2] section 170.6. The September order is an order reassigning the Filowitz matter only to another judge based on the Filowitzes' unopposed August 15, 2008, challenge for cause to Judge Vargas.

As far as the contention that the trial court "intentionally delayed the disqualification against Appellant which was required to be given until after the disqualification order of January 31, 2008," Gottschalk offers no evidence to support that assertion. Presumably he is referring to a verified statement of cause for disqualification of Judge Vargas that Gottschalk apparently lodged with the court in January 2008—there is a document so captioned in the record that is stamped "lodged document" and bears a handwritten notation "received 012508" in the corner, and at oral argument on

---

[2] All further statutory references are to the Code of Civil Procedure.

January 25, 2008, Gottschalk informed the court that he was seeking the court's disqualification. This document, like the others in the record submitted to the trial court for the January hearing, was not filed by Gottschalk for any plaintiff but was filed as counsel for himself. There is nothing in the record on appeal, however, to demonstrate that this document was properly filed and what action, if any, the trial court took in response. Although Gottschalk appears to argue that we are required to consider the allegations in this document as true, the authorities he cites do not stand for this principle, and we have no information from the incomplete record on appeal as to what happened to this document and the request for disqualification that would allow us to determine whether any of the facts alleged therein were ever determined to be true.[3]

Gottschalk next claims that Judge Vargas was twice disqualified by the Presiding Judge for violating Gottschalk's constitutional rights and those of the Filowitz plaintiffs and new counsel Putman. There is no evidence to support this contention. Judge Vargas was later peremptorily challenged pursuant to section 170.6 in conjunction with subsequent contempt proceedings, but the order reassigning that matter made no findings that the judge had violated anyone's constitutional rights. Judge Vargas was disqualified from the Filowitz matter in September 2008 when he did not oppose the verified challenge for cause filed by the Filowitzes that was filed in August 2008. (That verified statement is not in the record on appeal.) The Presiding Judge's order makes clear that the recusal was granted because the trial court did not oppose the request for disqualification and was thus deemed, pursuant to section 170.3, subdivision (c)(4) to have consented to the disqualification; here too, there were no findings that the court had contravened any constitutional principles.

---

[3] We are further hampered in any determination of the adequacy or import of the challenge to Judge Vargas by the fact that the challenge was supposed to be supported by a declaration by Gottschalk that is in the record on appeal, but there is no indication that the declaration was submitted to the trial court and none of the exhibits that are mentioned in the declaration were provided on appeal.

Gottschalk's next assertion, that the disqualification order should be deemed void "based on the subsequent disqualification of Judge Vargas by the Presiding Judge which was confirmed by the Chief Justice of the California Supreme Court," is unclear and unavailing. We understand that Judge Vargas was disqualified from the Filowitz matter in September 2008 when he did not oppose the verified statement filed by the Filowitzes. The record is bereft of any indication of "confirmation" by the Chief Justice of the Supreme Court beyond the selection of a new assigned judge by the Assigned Judges Program of the Administrative Office of the Courts at the request of the Presiding Judge of the San Diego County Superior Court. The fact that Judge Vargas was later disqualified from the Filowitz case alone, while leaving him the judge assigned to the remaining consolidated cases against the IMR cases, offers no basis for considering Judge Vargas to be disqualified at any earlier time, and Gottschalk has provided neither authority nor persuasive argument to support his contrary position.

Gottschalk's argument that we must accept the allegations in "the verified challenge for cause" as true is based on five cases, none of which stands for the proposition that the allegations of the challenge are binding on the appellate court. His argument that the allegations in the verified challenge for cause mandated Judge Vargas's disqualification in this case is confusing because we do not have the challenge for cause that led to the September 2008 disqualification; and as we have already noted, we do not have enough information to know whether the "lodged" challenge for cause that appears in the record was ever filed with the court, nor do we have the evidence that was purportedly furnished to support the challenge. We cannot therefore determine anything about Judge Vargas's disqualification except that the fact supporting it—that is, his lack of opposition—apparently arose when Judge Vargas did not oppose the disqualification motion in August 2008.

Finally, Gottschalk contends that the disqualification is also void in the *Meco* case because a final judgment had been entered approving a good faith settlement in that matter, and he has an attorney's lien for fees, costs, and expenses. He argues, "Such sua sponte disqualification order by Judge Vargas is void ab initio because of the finality of

the judgment that existed before he ordered the sua sponte disqualification of Appellant at the request of defendants counsel ex post facto." He relies on section 473, subdivision (d), which provides that "The court may, upon motion of the injured party, or its own motion, correct clerical mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed, and may, on motion of either party after notice to the other party, set aside any void judgment or order." Gottschalk does not explain, and we do not perceive, how this provision has any bearing on his argument. Gottschalk also cites the entire decision in *Lovret v. Seyfarth* (1972) 22 Cal.App.3d 841, a set of consolidated appeals from orders made after entry of a judgment that purported to correct and confirm an arbitration award. Gottschalk cites no specific passage in this opinion as supporting his argument and offers no explanation of how this case pertains to or supports his assertion, and we find nothing in the case that tends to invalidate the disqualification order as it relates to the *Meco* case. It is not sufficient to merely cite statutes or authority and to expect the reviewing court to develop an argument around them; a party must present legal argument based on supporting authority to present an issue on appeal. (*Levin v. Ligon* (2006) 140 Cal.App.4th 1456, 1486 [not sufficient for purposes of appeal to merely cite statutes]; *Alvarez v. Jacmar Pacific Pizza Corp*. (2002) 100 Cal.App.4th 1190, 1206, fn. 11 [where appellant's brief does nothing to elaborate on a "superficial and conclusory" theory, it is not the appellate court's responsibility to develop an argument]; *Interinsurance Exchange v. Collins* (1994) 30 Cal.App.4th 1445, 1448 [parties are required to include argument and citation to authority in their briefs, and the absence of these necessary elements is a waiver of the issue on appeal].)

VI. Due Process

This argument is another series of conclusory assertions, most without any reference to the factual record and without any pertinent citations to authority. This is insufficient to make a cognizable argument on appeal. "We need not address points in appellate briefs that are unsupported by adequate factual or legal analysis." (*Placer*

County Local Agency Formation Com. v. Nevada County Local Agency Formation Com. (2006) 135 Cal.App.4th 793, 814.)

Gottschalk argues that he "was not given the opportunity to respond in writing to being disqualified sua sponte," but the record shows that Gottschalk was fully aware of the motion to disqualify, opposed it both in writing and orally, and made a lengthy argument concerning disqualification before the trial court. Gottschalk has provided no authority, nor are we aware of any, that supports the notion that a party who has been afforded the opportunity to oppose a disqualification motion must also be offered the opportunity to respond to the disqualification once ordered.

Gottschalk next complains that the trial court did not indicate on the face of the order that it was enjoining him from representing the Filowitzes in federal court. There is no indication in this record that the trial court ever enjoined Gottschalk from representing anyone in federal court. How the disqualification impacted the federal court proceedings is another matter outside the record. (*CIT Group*, *supra*, 115 Cal.App.4th at p. 539, fn 1.)

He argues that the court did not "indicate that he would not read and consider the written consents and waivers of the Filowitz Plaintiffs and other clients of Appellant which mandated Judge Vargas' disqualification as a matter of law." Gottschalk does not explain how he purportedly knows that the trial court did not consider all the evidence before it, nor does he explain how the two waivers and consents in the appellate record could mandate the judge's disqualification. Without a cogent argument, we cannot consider this claim. (*Alvarez v. Jacmar Pacific Pizza Corp*., *supra*, 100 Cal.App.4th at p. 1206, fn. 11 ["It is not our responsibility to develop an appellant's argument"].)

Gottschalk then states that his opposition pleadings were unlawfully not filed and not read by the court. Here, he provides citations to two documents that he alleges the court refused to file and read: a declaration in opposition to the motion for reconsideration and the lodged verified challenge for cause from January 2008. He also refers us to two passages from the reporter's transcript from January 25, 2008. In one, Gottschalk asks the court to "put on the record all of the pleadings that you have read in this case from me dealing with the issue of the motion to disqualify," complains that the

court has not done it, asserts that there are 101 pleadings on Case Home Page, and complains that the court ordered that he could file a sur-reply but then did not let him file it. In the other, Gottschalk refers to 101 papers that were filed and makes a substantive argument concerning a conflict of interest. Neither of these references establishes that the trial court improperly failed to consider any document, nor has Gottschalk offered any legal argument or authority in support of his claim.

Next, Gottschalk asserts that "Judge Vargas took all of the pleading [*sic*] from October 17, 2007 on and had them put directly in the JCCP office [Judicial Council Coordinated Proceedings] without disclosure to Appellant or issuing a court order." Gottschalk offers neither any citation to admissible evidence to support this assertion nor any argument or analysis of how this purported fact could possibly impact the court's substantive determination that an unwaivable conflict of interest mandated Gottschalk's disqualification. He makes further unsupported arguments about Judge Vargas's supposed conduct that supposedly offer additional bases for Judge Vargas's disqualification in the Filowitz case, but a reviewing court may not consider alleged facts that are outside the record on appeal. (*CIT Group*, *supra*, 115 Cal.App.4th at p. 539, fn 1.)

The remainder of Gottschalk's argument is a reiteration of arguments made elsewhere in his brief. Gottschalk has not established any due process violation in the court's determination that an unwaivable conflict of interest had arisen in his simultaneous representation of litigants with adverse interests in the consolidated cases.

DISPOSITION

The judgment is affirmed. Appellant is to bear his own costs.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

ZELON, J.

We concur:

PERLUSS, P. J.

WOODS, J.